

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

In re: ) Chapter 11  
 )  
EASTERN LIVESTOCK CO., LLC, ) Case No. 10-93904-BHL-11  
 )  
Debtor. )  
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**TRUSTEE'S OBJECTION TO CLAIM 42 FILED BY CAPITOL INDEMNITY  
CORPORATION AND NOTICE OF RESPONSE DEADLINE**

James A. Knauer, the chapter 11 trustee appointed in this case ("Trustee"), pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), hereby objects (this "Objection") to claim 42 (the "Claim")<sup>1</sup> filed by Capitol Indemnity Corporation ("CIC"). The Trustee is aware of a complaint filed by CIC to collect from third-party sureties some or all of the debt asserted in the Claim. The Trustee maintains that the Claim should be subordinated to the claims of general unsecured creditors pursuant to 11 U.S.C. § 509(c). In support of this Objection, the Trustee respectfully states:

**Jurisdiction**

1. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B). Venue of this proceeding and this Objection is properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are 11 U.S.C. §§ 502, 506 and 507 and Rules 3001 and 3007 of the Bankruptcy Rules.

**Background**

3. On December 6, 2010 (the "Petition Date"), an involuntary chapter 11

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<sup>1</sup> All references herein to the claim number are to the number assigned to the Claim by BMC (see paragraph 5 below) and not to the number, if any, assigned to the Claim by the Court's online claims register. For further explanation, see paragraph 5 below.

bankruptcy petition was filed to commence a chapter 11 case (the "Chapter 11 Case") against Eastern Livestock Co., LLC ("Debtor") in the United States Bankruptcy Court for the Southern District of Indiana, New Albany Division (the "Court").

4. On December 27, 2010, the Court entered an order approving the appointment of the Trustee and on December 28, 2010, entered an order for relief.

5. On March 17, 2011, the Court entered an order approving The BMC Group, Inc. ("BMC") as the Trustee's claims and noticing agent in the Chapter 11 Case. Pursuant to that order, BMC was authorized and directed to, among other things, maintain the official claims register ("Claims Register") for all filed proofs of claim in the Chapter 11 Case. A copy of that Claims Register and all filed proofs of claim in the Chapter 11 Case can be viewed at <http://www.bmcgroup.com/restructuring/Claims.aspx?ClientID=271>.

6. The Court entered an order confirming the *Trustee's First Amended Chapter 11 Plan of Liquidation* [Dock. No. 1490] (the "Plan") on December 17, 2012, and the Plan became effective on December 20, 2012. *See* Dock. No. 1675.

7. Pursuant to the Plan, the deadline for claim objections is April 19, 2013.

### **Request for Relief**

8. By this Objection, the Trustee seeks entry of an order disallowing, reducing and/or subordinating the Claim.

9. The Claim asserts an unsecured claim in the amount of \$875,000 on account of CIC's funding of Debtor's dealer bond obligations under the Packers and Stockyards Act. However, CIC has filed a complaint to recover the same obligations from Anna Gayle Gibson and others. The Trustee objects to the Claim to the extent it has been reduced by payments from alternative sources.

10. In addition, and to the extent CIC asserts a valid claim against Debtor, the Claim should be subordinated to the claims of general unsecured creditors pursuant to 11 U.S.C. § 509(c). 11 U.S.C. § 509(c) provides:

The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

11. The Claim is apparently asserted as a co-debtor surety of Debtor's bond obligations. Those bond obligations inure to the benefit of unpaid cattle sellers that make up a large portion of the unsecured creditors in this case. Because the claims of unsecured creditors will not be paid in full in this case, the Claim should be subordinated to the claims of unsecured creditors.

12. The Trustee will file any further motion or adversary proceeding necessary to subordinate the Claim if and when the Claim becomes an allowed claim.

13. The Trustee objects to the Claim and requests that the Claim be disallowed, reduced and/or subordinated to the claims of general unsecured creditors.

**Notice of Response Deadline**

14. If CIC wishes to contest the relief requested in this Objection, CIC must file a response with the Court within thirty (30) days of the service of this Objection ("Response Deadline"). Responses must be filed with the Clerk of the United States Bankruptcy Court, Southern District of Indiana, New Albany Division, 110 U.S. Courthouse, 121 West Spring Street, New Albany, IN 47150 no later than 4:30 p.m. EDT on the Response Deadline and served on Trustee's Counsel, Faegre Baker Daniels LLP, 300 N. Meridian Street, Suite 2700, Indianapolis, IN 46204 (Attn: Dustin DeNeal). **IF NO RESPONSE IS FILED BY THE**

**RESPONSE DEADLINE THE COURT MAY SUSTAIN THE OBJECTION TO THE CLAIM WITHOUT FURTHER NOTICE OR HEARING.**

WHEREFORE, the Trustee respectfully requests that the Court enter an Order reducing the Claim by any amounts recovered from third parties and thereafter subordinate the Claim to the claims of general unsecured creditors. The Trustee asks for all other just and appropriate relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Dustin R. DeNeal

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on April 19, 2013, a copy of the foregoing pleading was mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

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